

Office of Personnel Management

§ 575.303

108–411. Each agency report must include—

(1) A description of how the authority to pay relocation incentives was used by the agency during the previous calendar year;

(2) The number and dollar amount of relocation incentives paid during the previous calendar year to individuals by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

§ 575.214 Relocation bonus service agreements in effect before May 1, 2005.

This subpart does not apply to a relocation bonus service agreement that was authorized under 5 U.S.C. 5753 and 5 CFR part 575, subpart B, before May 1, 2005. Such service agreements remain in effect until their expiration, subject to regulations applicable to relocation bonuses before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

Subpart C—Retention Incentives

SOURCE: 70 FR 25747, May 13, 2005, unless otherwise noted.

§ 575.301 Purpose.

This subpart contains regulations implementing 5 U.S.C. 5754, which authorizes payment of retention incentives. An agency may pay a retention incentive to a current employee under the conditions specified in this subpart when an agency determines that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that the employee would be likely to leave in the absence of an incentive.

[70 FR 25747, May 13, 2005, as amended at 72 FR 64527, Nov. 16, 2007]

§ 575.302 Definitions.

In this subpart:

Agency means an executive agency or a legislative branch agency included in 5 U.S.C. 5102(a)(1).

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Competencies means the knowledge, skills, abilities, behaviors, and other characteristics an employee needs to perform the duties of a position.

Employee has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c).

Executive agency has the meaning given that term in 5 U.S.C. 105.

OPM means the Office of Personnel Management.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which an employee is appointed before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency in return for payment of a retention incentive.

§ 575.303 Eligible categories of employees.

(a) Except as provided in § 575.304, an Executive agency may pay a retention incentive to a current employee who holds—

(1) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in 5 CFR 550.103;

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(5) A position under the Executive Schedule paid under 5 U.S.C. 5311–5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(7) Any other position in a category for which payment of retention incentives has been approved by OPM at the request of the head of an executive agency.

(b) Except as provided in § 575.304, a legislative agency may pay a retention incentive to a current employee who holds a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

[70 FR 25747, May 13, 2005, as amended at 72 FR 67839, Dec. 3, 2007]

§ 575.304 Ineligible categories of employees.

An agency may not pay a retention incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

§ 575.305 Applicability to employees.

(a) An agency may pay a retention incentive to an individual employee under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of

the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

(2) The employee would be likely to leave the Federal service in the absence of a retention incentive.

(b) Except as provided in paragraph (c) of this section, an agency may pay a retention incentive to a group or category of employees under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of the group or category of employees or a special need of the agency for the employees' services makes it essential to retain the employees in that group or category; and

(2) There is a high risk that a significant number of the employees in the group would be likely to leave the Federal service in the absence of a retention incentive.

(c) An agency may not include in a group retention incentive authorization an employee covered by § 575.303(b), (c), (e) or those in similar categories of positions approved by OPM to receive retention incentives under § 575.303(g).

(d) A retention incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) is at least "Fully Successful" or equivalent.

§ 575.306 Authorizing a retention incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when the unusually high or unique qualifications (*i.e.*, competencies) of an employee or a special need of the agency for the employee's services makes it essential to retain the employee and when the employee would be likely to leave the Federal service in the absence of a retention incentive;

(2) Determine when a group or category of employees has unusually high

or unique qualifications (*i.e.*, competencies) or when an agency has a special need for the employees' services that makes it essential to retain the employees in that group or category and when there is a high risk that a significant number of employees in the group would be likely to leave the Federal service in the absence of a retention incentive;

(3) Approve a retention incentive for an employee (or group or category of employees, except as prohibited by § 575.305(c)) in a position (or positions) listed in § 575.303;

(4) Establish the criteria for determining the amount of a retention incentive and the length of a service period under §§ 575.309 and 575.310, respectively;

(5) Request a waiver from OPM of the limitation on the maximum amount of a retention incentive for an employee (or group or category of employees) under § 575.309(e); and

(6) Establish the criteria for terminating a service agreement or retention incentive payments under § 575.311.

(b) *Factors for authorizing a retention incentive for an individual employee.* An agency must consider the following factors, as applicable to the case at hand, in determining whether the unusually high or unique qualifications of an employee or a special need of the agency for an employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive:

(1) Employment trends and labor market factors such as the availability and quality of candidates in the labor market possessing the competencies required for the position and who, with minimal training, cost, or disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;

(2) The success of recent efforts to recruit candidates and retain employees with competencies similar to those possessed by the employee for positions similar to the position held by the employee;

(3) Special or unique competencies required for the position;

(4) Agency efforts to use non-pay authorities to help retain the employee instead of or in addition to a retention incentive, such as special training and work scheduling flexibilities or improving working conditions;

(5) The desirability of the duties, work or organizational environment, or geographic location of the position;

(6) The extent to which the employee's departure would affect the agency's ability to carry out an activity, perform a function, or complete a project that the agency deems essential to its mission;

(7) The salaries typically paid outside the Federal Government; and

(8) Other supporting factors.

(c) *Factors for authorizing a retention incentive for a group or category of employees.* (1) An agency must consider the factors in paragraph (b) of this section as they relate to determining whether a group or category of employees—

(i) Has unusually high or unique qualifications (*i.e.*, competencies) or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category; and

(ii) That it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category would be likely to leave the Federal service in the absence of a retention incentive.

(2) An agency must narrowly define a targeted category of employees using factors that relate to the conditions described in paragraph (c)(1) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique competencies required for the position, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and required rating of record. (While a rating of record of higher than the "Fully Successful" rating of record required by § 575.305(d) may be a factor used in defining the targeted category, a rating of record by itself is not sufficient to justify a retention incentive. A rating of record may function as a supporting factor in authorizing an incentive or setting the incentive rate only to the

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extent it directly relates to the conditions in paragraph (d) of this section.)

(d) An agency must document the determinations required under paragraphs (b) and (c) of this section as required by § 575.308.

§ 575.307 Agency retention incentive plan and approval levels.

(a) Before paying retention incentives under this subpart, an agency must establish a retention incentive plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of retention incentives, subject to paragraph (b) of this section;

(2) The categories of employees who are prohibited from receiving retention incentives;

(3) Required documentation for determining that an employee would be likely to leave the Federal service;

(4) Any requirements for determining the amount of a retention incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements which, at a minimum, must include—

(i) The criteria for determining the length of a service period under a service agreement;

(ii) The conditions for terminating a service agreement;

(iii) The obligations of the agency if the agency terminates a service agreement; and

(iv) The conditions for terminating retention incentive payments when no service agreement is required (see § 575.310(f)); and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and fulfill the requirements of §§ 575.312 and 575.313.

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's (or group of employees') supervisor must review and approve each determination to pay a retention incentive to an individual or group of employees, unless there is no official at a higher level in the agency. The authorized agency official must review and approve the retention incentive determination before

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the agency pays the incentive to the employee.

(2) The higher level approval required by paragraph (b)(1) of this section is not needed when approving coverage of individual employees under a previously approved group retention incentive authorization.

(c) Unless the head of the agency determines otherwise, an agency retention incentive plan must apply uniformly across the agency.

[70 FR 25747, May 13, 2005, as amended at 72 FR 67839, Dec. 3, 2007]

§ 575.308 Approval criteria and written determination.

(a) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for an individual employee or group or category of employees using the approval criteria in § 575.306.

(b) For each determination to pay a retention incentive under this subpart, an agency must document in writing—

(1) The basis for determining that the unusually high or unique qualifications of the employee (or group of employees) or a special need of the agency for the employee's (or group of employees') services makes it essential to retain the employee(s);

(2) The basis for determining that the employee (or a significant number of employees in a group) would be likely to leave the Federal service in the absence of a retention incentive; and

(3) The basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period.

§ 575.309 Payment of retention incentives.

(a) An authorized agency official must determine the criteria for determining the amount of a retention incentive. An agency must establish a single retention incentive rate for each individual or group of employees that is expressed as a percentage of the employee's rate of basic pay. Except as provided in paragraph (e) of this section, a retention incentive rate may not exceed—

(1) 25 percent, if authorized for an individual employee; or

(2) 10 percent, if authorized for a group or category of employees.

(b) An agency may pay a retention incentive in—

(1) Installments after the completion of specified periods of service; or

(2) A single lump-sum payment after completion of the full service period.

(c)(1) An installment payment is derived by multiplying the rate of basic pay the employee earned in the installment period by a percentage not to exceed the incentive percentage rate established for the employee under paragraph (a) of this section. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee has a service agreement that provides for a retention incentive installment payment after completion of 6 pay periods of service at the full percentage rate established for the employee. The employee earns \$15,000 during the 6 pay periods of service (\$2,500 biweekly rate of basic pay \times 6). Upon completion of that service period, the employee will receive the accrued retention incentive installment payment of \$1,500 ($\$15,000 \times .10$).

(2) If the retention incentive installment payment percentage is less than the full percentage rate established for the employee under paragraph (a) of this section, any accrued portion of the retention incentive that is not paid as an installment payment during the service period must be paid as part of a final installment payment to the employee after completion of the full service period under the terms of the service agreement established under § 575.310. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee's service agreement provides for a 7 percent retention incentive installment payment after completion of 6 pay periods of service. The employee earns \$15,000 during the 6 pay periods of service (\$2,500 biweekly rate of basic pay \times 6). Upon completion of that installment period, the employee accrues a retention incentive installment payment of \$1,500 ($\$15,000 \times .10$). However, under the terms of the service agreement, the employee will receive a \$1,050 retention incentive installment payment ($\$15,000 \times .07$). The agency

must pay the accrued but unpaid portion of the retention incentive payment of \$450 ($\$1,500 - \$1,050$) as a final lump-sum payment upon completion of the full service period required by the service agreement.

(3) An agency may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period for which the retention incentive is being paid.

(d) A retention incentive payment paid as a single lump-sum payment upon completion of the full service period required by the service agreement is derived by multiplying the retention incentive percentage rate established under paragraph (a) of this section by the total basic pay the employee earned during the full service period. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee has a service agreement that provides for a single lump-sum retention incentive payment after completion of the full service period required by the service agreement (*i.e.*, 26 pay periods). The employee earns \$65,000 during the 26 pay periods of service (\$2,500 biweekly rate of basic pay \times 26). Upon completion of the full service period, the employee will receive a single lump-sum retention incentive payment of \$6,500 ($\$65,000 \times .10$).

(e)(1) An authorized agency official may request that OPM waive the limitation in paragraph (a) of this section and permit the agency to pay an individual employee or group of employees a retention incentive of up to 50 percent of the employee's basic pay based on a critical agency need. In addition to the determination required by § 575.308, the authorized agency official must determine that the employee's (or group of employees') unusually high or unique qualifications (*i.e.*, competencies) are critical to the successful accomplishment of an important agency mission, project, or initiative (*e.g.*, programs or projects related to a national emergency or implementing a new law or critical management initiative).

(2) Waiver requests must include—

(i) A description of the employee's work requirements and responsibilities

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or, if requesting a group retention incentive, a description of the group or category of employees and the number of employees to be covered by the proposed retention incentive;

(ii) A description of the critical agency need the proposed retention incentive would address;

(iii) The written documentation required by § 575.308;

(iv) The proposed retention incentive percentage rate and a justification for that percentage;

(v) The timing and method of making the retention incentive payments;

(vi) The service period required; and

(vii) Any other information pertinent to the case at hand.

(3) OPM may require that waiver requests for groups or categories of employees be coordinated with other agencies having similarly situated employees in the same category.

(4) Notwithstanding § 575.310(f), an authorized agency official must require a signed written service agreement for any employee who may receive a higher retention incentive as a result of approval of a waiver of the maximum limit on the amount of a retention incentive under paragraph (e)(1) of this section.

(f) An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency.

(g) An agency may not commence a group or individual retention incentive service agreement or provide a group or individual retention incentive without a service agreement under § 575.310(f) for any biweekly pay period during—

(1) A period of employment established under any service agreement required for the payment of a recruitment incentive under 5 CFR part 575, subpart A, or a relocation incentive under 5 CFR part 575, subpart B, (see 5 CFR 575.205(e) regarding the authority to commence a relocation incentive service agreement during a period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving previously authorized retention incentive payments without a service agreement); or

(2) A period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving a previously authorized retention incentive without a service agreement under § 575.310(f) (including a group retention incentive with or without a service agreement).

(h) A retention incentive is not part of an employee's rate of basic pay for any purpose.

(i) Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

[70 FR 25747, May 13, 2005, as amended at 72 FR 67839, Dec. 3, 2007]

§ 575.310 Service agreement requirements.

(a) Before paying a retention incentive, an agency must require an employee, including each employee covered by a group retention incentive authorization and any employee who may receive a higher retention incentive as a result of an approved waiver of the maximum limit on the amount of a retention incentive under § 575.309(e), to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function). An authorized agency official must determine the length of a service period. A written service agreement is not required under the condition described in paragraph (f) of this section.

(b) The service agreement must include the commencement and termination dates of the required service period. The service period must begin on the first day of a pay period and end on the last day of a pay period.

(c) The service agreement must specify the retention incentive percentage rate established under § 575.309(a); whether the incentive will be paid in installments or in a lump-sum payment upon completion of the service period provided in the service agreement; whether any installment payments will be paid at less than the full retention incentive percentage rate established under § 575.309(a), with the accrued but unpaid incentive payment being paid in a lump sum upon

completion of the full service period required by the service agreement under §575.309(c)(2); and the timing of incentive payments.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement before the employee completes the agreed-upon service period (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than “Fully Successful” or equivalent, or otherwise fails to fulfill the terms of the service agreement) under §575.311. The service agreement must specify the effect of a termination, including the conditions under which the agency will pay an additional retention incentive payment for partially completed service under §575.311(e) and (f).

(e) The service agreement may include any other terms or conditions that, if violated, will result in a termination of the service agreement under §575.311(b). For example, the service agreement may specify the employee’s work schedule, type of position, and the duties he or she is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in paid leave status are creditable towards the completion of the service period.

(f) A written service agreement is not required if the agency—

(1) Pays the retention incentive in biweekly installments; and

(2) Sets each biweekly installment payment at the full retention incentive percentage rate established for the employee under §575.309(a).

[70 FR 25747, May 13, 2005, as amended at 70 FR 74996, Dec. 19, 2005]

§575.311 Continuation, reduction, and termination of retention incentives.

(a)(1) An authorized agency official must terminate a retention incentive service agreement when conditions change such that the original determination to pay the retention incentive no longer applies (*e.g.*, when the agency assigns the employee to a different position that is not within the terms of the service agreement) or when payment is no longer warranted after considering factors such as—

(i) Whether a retention incentive is needed to retain the employee (or group of employees),

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group of employees), or

(iii) Whether the agency’s need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue paying a retention incentive.

(2) An authorized agency official may terminate unilaterally a retention incentive service agreement based solely on the management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, an agency may terminate a service agreement when there are insufficient funds to continue the planned retention incentive payments.

(b) An authorized agency official must terminate a retention incentive service agreement when—

(1) The employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct);

(2) The employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent; or

(3) The employee otherwise fails to fulfill the terms of the service agreement.

(c) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(d) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less

than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(e) To determine the amount of retention incentive payments that may be owed to an employee for completed service under paragraphs (c) and (d) of this section, multiply the total rate of basic pay the employee earned during the completed portion of the service period by the retention incentive percentage rate established for the employee under § 575.309(a) and subtract the amount of retention incentive payments already paid to the employee from this product. The difference is the amount owed to the employee for completed service.

(f)(1) For retention incentives that are paid when no service agreement is required under § 575.310(f), an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted. An authorized agency official must certify this determination in writing.

(2) An agency may continue paying a retention incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

(3) An authorized agency official must reduce or terminate a retention incentive authorization when no service agreement is required whenever conditions change such that the original determination to pay the retention incentive no longer applies (e.g., when the agency assigns the employee to a different position that is not within the terms of the original determination) or when payment is no longer warranted at the level originally approved or at all after considering factors such as—

(i) Whether a lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with

competencies similar to those possessed by the employee (or group or category of employees); or

(iii) Whether the agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all).

(4) An authorized agency official may terminate unilaterally a retention incentive authorization when no service agreement is required based solely on the management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, an agency may terminate a retention incentive when there are insufficient funds to continue the planned retention incentive payments.

(5) An authorized agency official must terminate a retention incentive authorization when no service agreement is required when—

(i) The employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), or

(ii) The employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent.

(g) The termination of a retention incentive service agreement or the reduction or termination of a retention incentive under this section is not grievable or appealable.

(h) If an agency terminates a retention incentive service agreement or reduces or terminates a retention incentive paid without a service agreement under this section, the agency must notify the employee in writing. When a retention incentive is terminated under paragraph (f) of this section, the employee is entitled to receive any scheduled incentive payments through the end of the pay period in which the written notice is provided or until the date of separation, if sooner.

[72 FR 67840, Dec. 3, 2007]

§ 575.312 Internal monitoring requirements and revocation or suspension of authority.

(a) Each agency must monitor the use of retention incentives to ensure

that its retention incentive plan and the payment of retention incentives are consistent with the requirements and criteria established under 5 U.S.C. 5754 and this subpart.

(b) When OPM finds that an agency is not paying retention incentives consistent with the agency's retention incentive plan and the criteria established under 5 U.S.C. 5754 or this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying a retention incentive to such employees; or

(2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying a retention incentive to such employees.

§ 575.313 Records and reports.

(a) Each agency must keep a record of each determination to pay a retention incentive and make such records available for review upon OPM's request.

(b) By March 31 in each of the years 2006 through 2010, each agency must submit a written report to OPM on the use of the retention incentive authority within the agency during the previous calendar year for use in compiling an OPM report to Congress, as required by section 101(c) of Public Law 108-411. Each agency report must include—

(1) A description of how the authority to pay retention incentives was used in the agency during the previous calendar year;

(2) The number and dollar amount of retention incentives paid during the previous calendar year to individuals by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

§ 575.314 Retention allowances in effect before May 1, 2005.

This subpart does not apply to a retention allowance authorized under 5 U.S.C. 5754 and 5 CFR part 575, subpart C, before May 1, 2005. Such allowances must continue to be paid until the retention allowance is reauthorized or terminated or until April 30, 2006, whichever comes first, subject to the regulations applicable to retention allowances before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

§ 575.315 Retention incentives for employees likely to leave for a different position in the Federal service.

(a) *Authority.* (1) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for an individual employee under the conditions prescribed in this section when the agency determines that—

(i) Given the agency's mission requirements and employee's competencies, the agency has a special need for the employee's services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization; and

(ii) The employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive.

(2) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for a group or category of employees (subject to the exclusions in § 575.305(c)) under the conditions prescribed in this section when the agency determines that—

(i) Given the agency's mission requirements and employees' competencies, the agency has a special need for the employees' services that makes it essential to retain the employees in their current positions during a period of time before the closure or relocation of the employees' office, facility, activity, or organization; and

(ii) There is a high risk that a significant number of the employees in the group would be likely to leave for different positions in the Federal service in the absence of a retention incentive.

(b) *Employee eligibility.* An agency may pay a retention incentive to an employee under this section when—

(1) The employee holds a position listed in § 575.303, and is not excluded by § 575.304;

(2) The employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) is at least "Fully Successful" or equivalent; and

(3) The agency has provided a general or specific written notice to the employee that his or her position may or would be affected by the closure or relocation of the employee's office, facility, activity, or organization (e.g., the employee's position may or would move to a new geographic location or the employee's position may or would be eliminated).

(c) *Retention incentive plan and approval levels.* Before authorizing a retention incentive under this section, an agency must include in its retention incentive plan established under § 575.307(a) the conditions and requirements governing the use of retention incentives under this section for employees who would be likely to leave for a different position in the Federal service before the closure or relocation of the employees' office, facility, activity, or organization, including a designation of the authorized agency officials who may approve retention incentives under this section, consistent with the approval requirements in § 575.307(b).

(d) *Approval criteria and written determination.* (1) For each determination to pay a retention incentive under this section, an agency must document in writing—

(i) The basis for determining the agency has a special need for the employee's (or group of employees') services that makes it essential to retain the employee(s), based on the agency's mission needs and the employee's (or group of employees') competencies, during a period of time before the closure or relocation of the employee's (or

group of employees') office, facility, activity, or organization;

(ii) The basis for determining, in the absence of a retention incentive, the employee (or a significant number of employees in a group) would be likely to leave for a different position in the Federal service; and

(iii) The basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period.

(2) An agency must address the following factors when documenting the determination required by paragraph (a) of this section for an individual employee:

(i) The factors for authorizing a retention incentive for an individual employee described in § 575.306(b) as they relate to a determination made under paragraph (a)(1) of this section;

(ii) The extent to which the employee's departure for a different position in the Federal service would affect the agency's ability to carry out an activity, perform a function, or complete a project the agency deems essential to its mission before and during the closure or relocation period (e.g., the agency's need to retain the employee to ensure minimal disruption in the performance of mission-critical functions, continuity of key operations, or minimal disruption of service to the public before and during the closure or relocation; to train new employees who will move with the organization to the new geographic location; to assist with the actual closure or relocation of the office, facility, activity, or organization; or to perform similar mission-essential functions before or during the closure or relocation);

(iii) The competencies possessed by the employee that are essential to retain; and

(iv) The agency (which may be in the executive, judicial, or legislative branch) for which the employee would be likely to leave in the absence of the retention incentive.

(3) An agency must address the following factors when documenting the determination required by paragraph (a) of this section for a group or category of employees:

(i) The factors for authorizing a retention incentive for a group or category of employees described in §575.306(c) as they relate to the determination made under paragraph (a)(2) of this section; and

(ii) The factors in paragraphs (d)(2)(ii) through (d)(2)(iv) of this section as they relate to the determination made under paragraph (a)(2) of this section for the group or category of employees.

(4) An agency must narrowly define a targeted category of employees using factors that relate to the conditions described in paragraph (a)(2) of this section. The factors that may be appropriate are described in §575.306(c)(2), except that each group retention incentive authorized under this section may cover no more than one occupational series.

(e) *Payment of retention incentives.* (1) Except as provided in paragraph (e)(2) of this section, the provisions regarding computing and paying retention incentives under §575.309 apply to computing and paying retention incentives under this section for employees who would be likely to leave for a different position in the Federal service before the closure or relocation of the their office, facility, activity, or organization.

(2) An agency may not pay retention incentives under this section in bi-weekly installments at the full retention incentive percentage rate established for the employee under §575.309(a).

(f) *Service agreement requirements.* (1) The service agreement provisions in §§575.310(b) through 575.310(e) apply to retention incentive service agreements under this section, subject to the additional requirements in paragraphs (f)(2) through (f)(5) of this section.

(2) Before paying a retention incentive under this section, an agency must require an employee, including each employee covered by a group retention incentive authorization, to sign a written service agreement to complete a specified period of employment with the agency.

(3) In no event, may the service period under a service agreement established under this paragraph extend past the date on which the employee's posi-

tion is actually affected by the relocation or closure of the employee's office, facility, activity, or organization (e.g., the date the employee's position moves to a new geographic location or the date the employee's position is eliminated).

(4) In addition to the terminating conditions in §575.310(d) and (e), the service agreement must include the conditions under which the agency must terminate the service agreement under paragraph (g) of this section, including the conditions under which the agency will pay an additional retention incentive payment for partially completed service under §575.311.

(5) The service agreement must include a notification to the employee that the agency will review the determination to pay the retention incentive at least annually to determine whether payment is still warranted, as required by paragraph (g) of this section.

(g) *Termination of retention incentives.*

(1) The provisions in §575.311 regarding termination of retention incentive service agreements and paragraphs (g)(2) through (g)(4) of this section apply to the termination of retention incentives authorized under this section. Each determination to pay a retention incentive under this section must be reviewed at least annually to determine if payment is still warranted. An authorized agency official must certify this determination in writing.

(2) In addition to the terminating conditions in §575.311(a) and (b), an authorized agency official must terminate a retention incentive service agreement under this section if—

(i) The closure or relocation is cancelled or no longer affects the employee's position;

(ii) The employee moves to another position not affected by the closure or relocation (including another position within the same agency);

(iii) For relocation situations, the employee accepts the agency's offer to relocate with his or her the office, facility, activity, or organization and, thus, the employee is no longer likely to leave for a different position in the Federal service; or

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(iv) The employee moves to a different position in the same office, facility, activity, or organization subject to closure or relocation that is not covered by the employee's service agreement. In this situation, the agency may authorize a new retention incentive for the employee under this section, as appropriate.

(3) If an authorized agency official terminates a service agreement under paragraph (g)(2)(ii) or (iv) of this section in cases in which the employee's movement to another position is by management action and not at the employee's request or under paragraph (g)(2)(i) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(4) If an authorized agency official terminates a service agreement in termination actions under paragraph (g)(2) of this section that are not covered by paragraph (g)(3) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(h) *Monitoring requirements.* The monitoring requirements in § 575.312 apply to retention incentives authorized under this section.

(i) *Records and reports.* (1) In addition to the recordkeeping requirements in § 575.313(a), each agency must submit a written report to OPM by March 31 of each year on the use of retention incentives under this section. Each report must include—

(i) A description of how the authority to pay retention incentives under this section was used in the agency during the previous calendar year;

(ii) The number and dollar amount of retention incentives paid during the

previous calendar year to individuals under this section by occupational series and grade, pay level, or other pay classification;

(iii) The agency (which may be in the executive, judicial, legislative branch) to which each employee would be likely to leave in the absence of a retention incentive;

(iv) Each employee's official worksite and the geographic location of the agency (which may be in the executive, judicial, or legislative branch) for which each employee would be likely to leave in the absence of a retention incentive; and

(v) Other information, records, reports, and data as OPM may require.

(2) In each of the years 2008 through 2010, the written report required by paragraph (i)(1) of this section may be included in the agency's written report to OPM for OPM's report to Congress under § 575.313(b).

[72 FR 64527, Nov. 16, 2007]

Subpart D—Supervisory Differentials

SOURCE: 56 FR 20338, May 3, 1991, unless otherwise noted.

§ 575.401 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5755, which authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee.

§ 575.402 Delegation of authority.

(a) The head of an agency may pay a supervisory differential to a supervisor who is—

(1) In a General Schedule position paid under 5 U.S.C. 5332; and

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates